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In the Supreme Court of the United States

OCTOBER TERM, 1956
No. 334

COMPANIA NAVIERA HIDALGO, S. A., a corporation,

Petitioner,

vs.

WILLIAM BENZ, et al, Individually and as Representatives of All of the Members of the SAILORS' UNION OF THE PACIFIC,

M. D. MacRAE, et al, Individually and as Representatives of All of the Members of Local 90 of the NATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL,

JEFF MORRISON, et al, Individually and as Representatives of All of the Members of ATLANTIC AND GULF DISTRICT, SEAFARERS' INTERNATIONAL UNION, AFL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Compania Naviera Hidalgo, S. A., a corporation, the petitioner above-named, respectfully petitions for a writ

of certiorari that this Court might review so much of the judgments of the United States Court of Appeals for the Ninth Circuit entered on April 6, 1956, as modify in part decrees of the District Court of the United States for the District of Oregon.

OPINIONS OF THE COURTS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 233 F. 2d 62, with its opinion on petition for rehearing following. These are set forth as Appendices A and B to this petition.

The opinion of the United States District Court for the District of Oregon is not reported, but is set forth as Appendix C.

JURISDICTIONAL STATEMENT

The judgments of the United States Court of Appeals for the Ninth Circuit which is sought to be reviewed were made and entered on April 6, 1956.

The petitioner's Petition for Rehearing was denied May 21, 1956.

The jurisdiction of the Supreme Court of the United States is invoked under Section 1254 (1), Title 28 U.S. C.A., 62 Stat. 928.

QUESTION PRESENTED

In a diversity case, brought in the District Court for the District of Oregon, where a decree for damages is entered against each and all of the members of an un-

incorporated labor union, in a class suit brought against them through proper representatives, for their collective tort, may such decree also run against the union, in its name, or provide for execution against the collective assets of the union?

RULES AND STATUTES INVOLVED

The following Federal Rules of Civil Procedure are relevant to a determination of the question presented:

(1) **"Rule 17. Parties Plaintiff and Defendant; Capacity.**

"(a) * * *

"(b) Capacity to Sue or be Sued. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, . . ."

(2) **"Rule 23. Class Actions.**

"(a) Representation. If persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is

"(1) joint, or common, . . ."

The following Oregon Statute is also relevant to the inquiry:

> **"ORS 13.170 Compulsory joinder; representative suits. . . .** When the question is one of a common or general interest of many persons, or when the parties are very numerous, and it may be impractical to bring them all before the court, one or more may sue or defend for the benefit of the whole." (formerly O.C.L.A. § 9-106)

STATEMENT OF THE CASE

For clarity, petitioner will be referred to as plaintiff, and respondents as defendants.

Plaintiff is a Panamanian corporation.

It sued defendants Benz et al., individually and as representatives of all of the members of the Sailors Union of the Pacific, in the District Court of the United States, for the District of Oregon. The complaint prayed for an injunction against and damages for the unlawful picketing of plaintiff's vessel conducted by defendants. Benz and the others named individually and as representatives, are citizens of Oregon.

Jurisdiction of the District Court was based on diversity of citizenship and an amount in controversy in excess of $3,000.00. 28 U.S.C.A. § 1332 (a)(2).

The other two cases are identical in nature.

Temporary injunctions were issued in all three cases and the defendants appealed those to the Court of Appeals for the Ninth Circuit. It dismissed the appeals as

moot and remanded the cases for trial on the issue of damages, *Benz, et al. v. Compania Naviera Hidalgo* (1953), 205 F.2d 944.

The District Court found the picketing unlawful and the proximate cause of substantial damage to plaintiff, in each case. Relevant to the question here involved, if found,

> "At all times herein mentioned the Sailors' Union of the Pacific had a membership upwards of 5,000 men, many of whom were employed on ocean-going vessels so that it would have been impracticable and impossible to join all of said members as defendants in this suit. At all times herein mentioned, the Sailors' Union of the Pacific operated under rules and regulations by virtue of which its members acted as an organized body, and its members had sufficiently identical interests in the subject matter of this suit to constitute a class subject to suit by service on representatives. Defendants Benz and Williams, by virtue of their position as members and officers of such union and their interest as defendants herein, are appropriate and capable persons to represent the interests herein of all of the members of the Sailors' Union of the Pacific and were sued herein as such representatives, as well as individually." (R. 238-9; Similar finding in the MacRae case, R. 324-5; in the Morrison case, R. 370-1.)

It concluded:

> "The Court has jurisdiction of the parties. This is a true class suit and defendants Benz and Williams are the representatives of all of the members of the Sailors' Union of the Pacific." (R. 244, similar conclusion in the MacRae case, R. 332; in the Morrison case, 379.)

The District Court held,

> ". . ., the fact that an unincorporated union may not

> be sued as an entity does not mean that a union may not be bound by a judgment rendered in a class action in which some individual members of the union are named and served." (Opinion, August 9, 1954, Appendix C, *infra*, p. 38)

In each case the final decree provided that plaintiff recover its damages, together with its costs and disbursements, of and from the individuals named, each member of the union and the union, and each and all of them. It further provided that execution issue against the individual property of the named and served individuals and against any property held by the union or for the use and benefit of its members; but that execution not issue against the individual property of any member not individually named and made a party. (Benz. R. 247-8, Appendix E, infra p. 42; MacRae, R. 335-6, Appendix F, infra p. 43; Morrison, R. 381-2, Appendix G, infra p. 44)

On appeal, the Court of Appeals for the Ninth Circuit affirmed all the findings of the District Court. It also held,

> "So far as these suits are class suits, they were properly brought under Fed. R.Civ. P. 23 (a)(1). The propriety of class suits to sue members of labor unions where those unions may not be sued as separate entities is too well established to require the citation of authority here." (233 F.2d 62, at 67, Appendix A, infra, p. 27)

It held, however, that under Federal Rule of Civil Procedure 17(b), in a diversity case, the class suit provided by Rule 23 (a)(1) does not give jurisdiction over a union or its assets unless the state law so provides. Holding that Oregon law does not so provide, it modi-

fied the decrees of the District Court by reversing that portion of them which provided for recovery against the unions as such and granted execution against their assets. (Appendix C, infra p. 41; Benz, R. 501; MacRae, R. 502; Morrison, R. 503)

Plaintiff's petition for rehearing on the question here presented was denied May 21, 1956.

ARGUMENT

I. The question presented is an important one of federal procedure and the decision of it below is in conflict with prior decisions of this and other federal courts.

In recent years an increasing number of class actions or suits have been filed in the federal courts to recover damages for the torts committed by unincorporated labor unions. Nearly all were diversity cases brought in districts where the state law did not allow unions to sue or be sued as entities. All have held that by virtue of Federal Rule 23(a)(1), such a proceeding is proper and gives jurisdiction over the union: *Montgomery Ward v. Langer et al* (CCA 8, 1948), 168 F. 2d 182 (libel published in union paper); *Tunstall v. Brotherhood of Locmotive Firemen and Enginemen et al* (CCA 4, 1945), 148 F. 2d 403 (Discrimination on account of race in establishing job eligibility); *Carolina Casualty Insurance Co. v. Local No. 612 et al* (N.D. Alabama, S.D., 1956), 136 F Supp. 941 (Dynamiting vehicles); *White v. Quisenberry* (W.D. Mo., 1953), 14 FRD 348, 19 F.R. Serv. 23a.31, Case 1 (Assault and battery); *Ketcher et al v. Sheet-*

metal Workers International Association et al (E. D. Ark. W.D., 1953), 115 F. Supp. 802 (conspiring to deprive plaintiff of union workers and to bring about breach of collective bargaining agreement); *Pascale et al v. Emery et al* (D. Mass., 1951), 95 F. Supp. 147 (Libel published in union paper).

The reasoning of these cases is well illustrated by the following:

> "The class action was an invention of equity (*Hansberry v. Lee*, 311 U.S. 32, 41, 61 S.Ct. 115, 85 L. Ed. 22, 132 A.L.R. 741) mothered by the practical necessity of providing a procedural device so that mere numbers would not disable large groups of individuals, united in interest, from enforcing their equitable rights nor grant them immunity from their equitable wrongs. See *United Mine Workers of America v. Coronado Coal Co.*, 259 U.S. 344, 387-389, 42 S. Ct. 570, 66 L. Ed. 975, 27 A.L.R. 762. By Rule 23 the Supreme Court has extended the use of the class action device to the entire field of federal civil litigation by making it applicable to all civil actions. The usefulness of the device in its new environment will depend largely upon the attitude of the courts. If the device is to be loaded down with arbitrary and technical restrictions, it will serve no very useful purpose in the enlarged field. If, on the other hand, the courts will disregard the ancient and often arbitrary distinctions between actions at law and suits in equity and will permit the Rule to operate in all cases to which it justly and soundly may be applied, it will serve its intended purpose. Like most procedural devices, its usefulness is susceptible to being nibbled away by those who regard it as an unwelcome stranger in an unsuitable environment.
>
> * * *
>
> "We know of no practical reason why the procedure prescribed by Rule 23 (a) (1) should not be

as far and as effective in enabling unincorporated associations to sue or be sued as is the procedure—which prevails in many jurisdictions—of permitting them to sue or defend under their common names. Where such associations have the status of legal entities, the members who act for them in bringing or defending actions are in reality the representatives of the membership as a whole." (*Montgomery Ward v. Langer et al, supra,* 168 F. 2d at 187).

"That an unincorporated labor association may sue and be sued in equity in a class suit, with the suit brought by or against representatives of the class is but an application of the well settled general rule. (Citing cases). Even in a state like West Virginia which adheres to the common law rule that an unincorporated labor association may not be sued as an entity, see *Milam v. Settle,* W. Va. 32 S. E. 2d 269, such an association may be sued in the state courts by naming as parties and serving individually some of the members composing the association." (*Tunstall v. Brotherhood of Locomotive F. and E., supra,* 148 F. 2d at 405).

The decision below is in conflict with all of these in holding that a class suit brought under Rule 23 (a) (1) does not give jurisdiction over the union but only over its members and that a judgment against the members may not be enforced against union assets. In short, it denies that the class suit is a means of suing the union at all, much less, "as effective in enabling unincorporated associations to sue or be sued as is the procedure . . . of permitting them to sue or defend under their common names," *Montgomery Ward v. Langer, supra.*

The opinion of the Court of Appeals for the Ninth Circuit mentions none of these conflicting decisions save that in the *Tunstall Case,* which it dismisses as "not appo-

site" because it "arose under federal law" (233 F. 2d at 68). It is true that the right infringed in that case was federal; but no mention of that fact was made in the opinion of Circuit Court of Appeals for the Fourth Circuit. Instead, Chief Judge Parker relied on historical principles of procedure, equally applicable to diversity cases. And the other conflicting decisions cited were all diversity cases, indistinguishable from this.

The Court below mentioned that, under Federal Rule of Civil Procedure 17, the capacity of a union to be sued must be determined by state law in a diversity case. We doubt it intended to say that the class action or suit is available in such cases only to the extent provided by state law. Its opinion includes the statement that, "So far as these suits are class suits, they were properly brought under Fed. R.Civ. P. 23(a)(1), 28 U.S.C.A." (233 F.2d at p. 67). In *Montgomery Ward v. Langer et al.*, the Circuit Court of Appeals, Eighth Circuit held the procedure under Rule 23 alternative to and not dependent on Rule 17, 168 F.2d 182, at 187. And in the *Tunstall case*, the Circuit Court of Appeals, Fourth Circuit, held, "There is nothing in Rule 17 (b) which limits the right to bring a class suit under Rule 23(a) in proper cases," 148 F. 2d 403, at 405. The question is not whether class procedure is available. Rather, it is whether such procedure is in fact a suit against the union and effective to reach its assets.

The cited decisions in the Fourth and Eighth Circuits and those of district courts hold that it is. In the *Tunstall Case, supra,* Chief Judge Parker affirmatively answered

the question, "May a class suit be brought against an unincorporated association in such a way as to bind the association?" A judgment in favor of the plaintiff against the Brotherhood for $1,000.00 was subsequently affirmed, *Brotherhood of Locomotive Enginemen v. Tunstall* (CCA 4, 1947), 163 F.2d 289, cert. den., 332 U.S. 841, 92 L. Ed. 413, 68 S.Ct. 262. In *Carolina Casualty Insurance Co. v. Local No. 612 et al, supra,* the court held a complaint brought ". . . for the purpose of subjecting the funds and property of the International Union . . ." proper as a class action. In each of the other cited cases the court states that class procedure is a device by which "the union" or "the association" may sue and be sued. In his work on Federal Practice, Professor Moore states,

> "In an action to recover damages against an unincorporated association, brought as a class action by naming representatives of the association as defendants, the judgment should be binding on the association and also, insofar as the action asserts individual liability of the members, it should be binding on the individuals named as defendants and duly served with process, but not upon other individual members." (3 Moore, Federal Practice (2d Ed.), § 23.11 at p. 3465)

Only the court below holds contrary. And even it admits that the unions are in court for purposes of a judgment in their favor, though not against. In each of these cases its judgment provides that "the unincorporated association" recover costs (R. 501, 502, 503).

In reaching its decision, the court below felt bound to look to Oregon law. But if the availability of class procedure does not depend on Oregon law, how can its nature and effect be determined by Oregon law?

We respectfully submit that the court below was led into this erroneous search by its expressed belief that a union could not be sued in a class suit prior to the decision of this court in *United Mine Workers of America v. Coronado Coal Co.* (1922), 259 U.S. 344, 66 L. Ed. 975, 42 S.Ct. 570, 27 A.L.R. 762. That belief is belied by an impressive array of authority and supported by none that we know.

So far as the law in England is concerned, that was pointed out in *Taff Vale Ry. Co. v. Amalgamated Society of Railway Servants* [1901], A.C. 426. There the House of Lords held that a union might be sued in its registered name. In doing so, however, Lord Macnaghten remarked,

> "I have no doubt whatever that a trade union, whether registered or unregistered, may be sued in a representative action if the persons selected as defendants be persons who from their position may be taken fairly to represent the body." [1901] A.C. 426, at 438.

Lord Lindley, also emphasized that the suit in the registered name was a mere matter of form rather than substance, as the same result would obtain in a representative suit, [1901] A.C., at 444.

The most thorough commentator of the early development of English trade union law declares flatly,

> "The liability of Unions and their funds (apart from recent legislation) follows from the general principles of agency applied to voluntary societies, and independently of any special status conferred on registered unions is enforceable by means of a representative action." Geldart, *The Status of Trade Unions in England* (1912), 25 Harv. L. Rev. 579, at 594.

The same is true in this country. In *St. Germaine v. Baker and Confectionary Workers* (1917), 97 Wash. 282, 166 Pac. 655, as in these cases, the suit was for an injunction and damages for wrongful picketing. The court held,

> "In the decree, the costs were awarded against certain of the respondents, but not against the unions, which were really the instigators, and controlled the picketing and caused the damage in the case. It is argued by the respondents that costs cannot be awarded against the unions, because the unions are not incorporated bodies, but are mere voluntary associations. It is alleged in the complaint that these unions are voluntary organizations, that the membership thereof is in the neighborhood of 500, and is so large that it is impractible to bring all the members thereof before the court, and the officers, therefore, only, are made parties, without bringing all of the members of the unions before the court. In the case of Branson v. Industrial Workers of the World, 30 Nev. 290, 95 Pac. 354, a Nevada case, it was held that in an action in equity against a voluntary unincorporated organization, where the members comprising the same were numerous, such organizations might be made parties to an action, where a few of the members thereof were made defendants for the purpose of representing the organization, and, in that case, it was held proper to enter a judgment against the organization as well as against the individual parties who were named as defendants in the case. That case is a learned discussion of the question, and, we think, is conclusive. It became the duty of the court, therefore, to enter a judgment for damages and costs against all of the respondents." (166 Pac. at 669).

In the even earlier case of *Branson v. I.W.W.* (1908), 30 Nev. 270, 95 Pac. 354, the Supreme Court of Nevada

upheld an attachment against union assets in a class action. The court there specifically recognized that voluntary unincorporated associations could not sue or be sued in their names alone; but recognized that they could sue or be sued by joining in all of their members, either in fact or through a class proceeding against proper representatives. And see *Barnes v. Chicago Typographical Union* (1908), 232 Ill. 402, 83 N.E. 932.

General statements, found in many cases, that at common law unions cannot be sued as entities and that their liabilities must be enforced against all the members, severally, do not mean that unions cannot be sued at all. They merely require joinder of all members. When that is done, in fact or by representation, the union is sued. The common law refused to recognize the union as having existence apart from the members. When they were sued, it was sued.

All of this was known and relied on by this Court in deciding the *Coronado case, supra*. It undoubtedly led to the statement of Chief Justice Taft, speaking for the Court, that the decision to allow suits against unions in their names, "is, after all, in essence and in principle, merely a procedural matter." 259 U.S. 344, at 390.

The decision of the court below twists that procedural liberalization in a case involving a federal statute into a denial of any procedure at all in diversity cases.

II. If the availability and effect of class procedure in a diversity case depend on state law, then the decision below decides an important question of Oregon law contrary to the law of Oregon as declared by its legislature and courts.

As stated, the Court below felt it necessary to look to Oregon law to find the effect of a judgment in a class suit.

The class procedure is available under Oregon law, ORS 13.170 (formerly O.C.L.A. § 9-106), set out *supra*, p. 4.

But as already argued, *supra*, pp. 12-14, the court below mistakenly considered that procedure ineffective as a suit against a union or to reach its assets. Regardless of whether the class suits were brought under procedure provided by Oregon or by the Federal Rule, they were suits against the unions and the decrees of the District Court were correct.

These were not suits against the unions as entities in their own names. Whether or not Oregon has adopted the rule of the *Coronado Case, supra,* we submit, is irrelevant. If it is relevant, the fact is that the Supreme Court of Oregon has never had to decide whether a union may be sued as an entity. Probably because unions are commonly so sued without any question. See, e.g., *Schwab v. Moving Picture Operators* (1941), 165 Or. 602, 109 P.2d 600; *Markham and Callow v. Inter. Woodworkers* (1943), 170 Or. 517, 135 P.2d 727. Nor has it ever considered the effectiveness of class procedure to reach union assets.

The two Oregon decisions cited by the court below involve neither question. *Lonsford v. Burton* (1953), 200 Or. 497, 267 P.2d 208, was a class suit; but the only question decided was that the plaintiff representatives were not qualified to represent the class they claimed to represent. *Cousins v. Taylor* (1925), 115 Or. 472, 239 Pac. 96, was an action against 15 members of an unincorporated association, individually. They were not sued as representatives. They were not sued in the association name.

In this state of the Oregon law, the Federal courts in a diversity case should look to all pertinent data, includin Oregon statutes, court decisions on related questions and cases from other jurisdictions to determine what the Supreme Court of Oregon *would* hold if presented with these questions. *Stentor Electric Mfg. Co. v. Claxon Co.* (CCA 3, 1942), 125 F. 2d 820.

In *Carpenters Union v. Backman* (1939), 160 Or. 520, 86 P.2d 456, the Oregon Supreme Court held that an unincorporated labor union had entered into a contract enforceable "as between the members themselves and as between the association on one side and the individual members on the other," 160 Or. at 528. It thus clearly recognized the union as an entity separate from the members.

The same case also holds that the members of a union have no severable interest in its funds. This is clearly in conflict with the holding below that the union funds must be reached by levying on each member's share, individually. There are no such shares. Under the decision below these funds are entirely unreachable.

Apart from the fact that many Oregon general laws are made applicable to associations, the code has long contained many specific provisions relating to labor unions. See Chapters 661 and 662 ORS (formerly OCLA Chapter 102). Their legality is recognized, ORS 661.010. The property rights of unincorporated organizations and associations in the labor field are specifically regulated by ORS 661.040, which requires such organizations and associations to keep books of all their receipts and expenditures and to be accountable to their members. The right to the union label is set forth and a right of damages for infringement given the union, ORS 661.210 through 661.280.

Even more significant, the Oregon Code specifically recognizes the liability of such associations. ORS 662.070 (formerly OCLA § 102-915) provides as follows:

> **"Liability of associations and officers and members of associations for unlawful acts of individuals.** No officer or member of any association or organization and no *association or organization* participating or interested in a labor dispute, shall be held responsible or liable in any court of this state for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof." (Emphasis added)

Why does the legislature limit the conditions under which a labor "association or organization" may be liable if it never had any liability?

With the vast field now occupied by associations and particularly with the power and wealth which such asso-

ciations now have in the labor field, they should not be permitted to escape liability to those who must come in contact with them.

The decision below drastically limits in the Ninth Circuit the effectiveness of federal class procedure, contrary to holdings of two other courts of appeal and many district courts. It ignores pertinent Oregon law, both decisional and statutory, to grant an immunity from all liability to union funds in Oregon. It inequitably requires collection of the sums adjudged due herein from the personal assets of a few of the many guilty of the wrong. Its perversion of equitable procedure to injustice should not be allowed to stand.

CONCLUSION

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion of the United States Court of Appeals For the Ninth Circuit

These are appeals from judgments awarding damages in three separate suits brought by the appellee, a Panamanian corporation, in the district court. Appellee is the owner and operator of the S. S. Riviera, a vessel of Liberian registry. The appellants, defendants in the several actions below, are citizens of the State of Oregon and of states or counties different from that of the plaintiff. Appellants were sued individually as officers of three voluntary unincorporated labor associations, and also as representatives of classes composed of the members of their respective labor associations.

These cases were before us previously, on appeals from interlocutory injunctions issued against the same appellants to restrain them from picketing appellee's vessel. *Benz v. Compania Naviera Hidalgo, S.A.*, 205 F. 2d 944 (9th Cir. 1953). The vessel had sailed before the case came on for hearing and we accordingly dismissed for mootness, returning the case to the district court for trial of the damage claims. We directed that those claims be prosecuted free from the effects of res judicata arising from the injunctions, and generally "as free from the effects of such injunctions, as if the same had not been issued." Id., at p. 947.

The basic facts are these: The Riviera arrived at the Port of Portland, Oregon, on September 3, 1952. Her crew were all foreign nationals, chiefly Germans and

British, who between March and August, 1952, had signed British articles in Germany, agreeing to work on the ship on a voyage from Bremen, Germany, for a period of two years, and agreeing that British maritime board conditions should apply to their wages, hours of employment and working conditions. About September 9th, the crew entered upon a strike and refused to leave the vessel. They remained on the vessel and on strike until September 26, 1952, when they were required by an order and decree in admiralty issued out of the district court to leave the ship.

The district court found that the company had lived up to all of its obligations under the articles, that the vessel was seaworthy, and that the purpose of the strike was to secure shorter articles and higher wages than those agreed upon. On October 14, 1952, the Sailors' Union of the Pacific, pursuant to resolution duly passed by its members, took up the picketing of the ship, which had been carried out hitherto by the striking crew itself. From October 14th to November 26, 1952, when it was enjoined from further picketing by the district court, the Sailors' Union of the Picific picketed the vessel for the purpose, as the district court found, of compelling the company to rehire the striking crew members at higher wages, different conditions, and for shorter articles than those agreed upon.

On November 28, 1952, two days after the injunction against the Sailors' Union of the Pacific was issued, another picket line was established at the vessel by Local 90 of the National Organization of Masters, Mates and

Pilots. The district court found that the purpose of the picketing was to enforce the demands of the crew and to assist the Sailors' Union of the Pacific in enforcing the demand of that union that the crew be rehired on the conditions and terms demanded. On December 8, 1952, the National Organization of Masters, Mates and Pilots, Local 90, was enjoined from further picketing.

On December 10, 1952, another picket line was established by the Atlantic and Gulf District Seafarers' International Union, and maintained until restrained by the district court on December 12, 1952. The district court found that the purpose of the picketing by the Atlantic and Gulf District, Seafarers' International Union, was the same as that of the National Organization of Masters, Mates and Pilots, Local 90, that is, to assist the Sailors' Union of the Pacific in enforcing its demand that the striking crew be rehired on different terms than those agreed upon, and to compel the company to meet that demand.

The district court further found that all picketing was at all times peaceful and orderly, that the refusal of shore employees engaged in repair and loading of the vessel to cross the picket lines was directly caused by the picketing of the appellants, and assessed damages in accordance with the number of days' delay caused by each of the appellants respectively.

Appellants' specifications of error, so far as they relate to questions of law, may be grouped under three general categories. It is argued that the district court erred in concluding that (1) it had jurisdiction to try

these damage cases, (2) the acts complained of constituted actionable torts under Oregon law, and (3) that these were proper class suits and that the judgments could be enforced against the assets of unincorporated associations.

(1) The district court's jurisdiction is attacked, first, by reason of the Norris-La Guardia Act's prohibitions against injunctions in labor disputes. See Title 29 U.S.C.A. Secs. 101-114. The appeals before us, however, have nothing to do with the injunctions issued by the district court in the previous litigation between the parties at bar. The Norris-La Guardia Act is not involved in these cases, and is not discussed further.

The district court's jurisdiction is next assailed on the ground that the picketing by the labor associations here involved is with the protection, or alternatively, prohibition of the National Labor Relations Act as amended by the Labor Management Relations Act, 29 U.S.C.A. 141 et seq.

The district court's jurisdiction derived from 28 U.S.C.A. 1332 (a)(2). In granting a remedy, it was applying the tort law of Oregon. The question posed, therefore, is whether the reach of the federal labor legislation extends to take exclusive cognizance of the cause, forestalling the exercise of jurisdiction by courts acting as courts of enforcement of state law, and relegating the dispute to the National Labor Relations Board. It may be noted that no party to any of these cases at any time had resort to the Board.

Appellee argues, on the basis of cases holding that the collective bargaining provisions of general labor legislation are not applicable to seamen during the period of valid articles, *Southern Steamship Co. v. NLRB,* 316 U.S. 31 (1942); *Rees v. U. S.,* 95 F 2d 784 (4th Cir. 1938); *Peninsular & Occidental Steamship Co. v. NLRB,* 98 F. 2d 411 (5th Cir. 1938), that the picketing here undertaken by the labor associations to enforce the demands of a crew of a vessel in violation of their articles is not within the scope of the conduct regulated by the National Labor Relations Act, as amended. Appellee argues further that, regardless of the applicability of general American labor legislation to American maritime labor disputes, Congress did not intend to subject this dispute to the National Labor Relations Act, as amended. This is a dispute between a foreign employer and a foreign crew having signed foreign articles in a foreign port to serve on a foreign ship. The sole points of contact with America in this case are the eruption of the dispute in an American port, and the participation of American labor associations in the dispute by means of picketing.

It may well be that American laws should not be construed to apply, without some more explicit Congressional indication than we are able to find in the National Labor Relations Act, as amended, to situations with as many points of foreign contact as the situation at bar. Cf. *Lauritzen v. Larsen,* 345 U.S. 571 (1953) (Applicability of Jones Act to foreign seamen injured on foreign vessel. See especially the discussion of Mr. Justice Jackson, for the Court, at p. 581 et seq.) The

National Labor Relations Board, furthermore, seems to have taken the position that it has no jurisdiction to determine the collective bargaining agent for the crew of a foreign vessel. *Sailors' Union of the Pacific, Case No. 20 R. C. 809, C.C.H. Labor Reports, 1950-51 N.L.R.B. Decisions, Par. 1,081, May 1, 1950.*

However, it does not seem to us necessary to decide the question whether and to what extent the National Labor Relations Act, as amended, would extend to the controversy before us. The narrow question before us is not whether the National Labor Relations Act, as amended, applies to this dispute at all, but whether it has preempted the field so completely as to bar Oregon from giving a remedy by means of an action in tort for the damage done by the picketing here involved. That question seems to us decisively settled by the Supreme Court in *United Construction Workers v. Laburnum Construction Co.*, 347 U.S. 656 (1954). In that case, damages were sought in a state court for harm done by picketing, including harm done by violent picketing. The Court said, with respect to the union's argument there:

> "They claim that state courts accordingly are excluded not only from enjoining future unfair labor practices and thus colliding with the Board, as occurred in Garner v. Teamster's Union, 346 U.S. 485, but that state courts are excluded also from entertaining common-law tort actions for the recovery of damages caused by such conduct. The latter exclusion is the issue here. In the Garner case, Congress had provided a federal administrative remedy, supplemented by judicial procedure for its enforcement, with which the state injunctive procedure conflicted. Here Congress has neither pro-

vided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct." At 664.

The Court went on to affirm the award of damages in the state court. The *Laburnum* case thus established as the test of concurrent state jurisdiction, the lack of a substantially similar remedy in the federal scheme of regulation of labor disputes.

The remedy sought in the cases before us is damages. No such remedy exists under the federal laws for this fact situation. This is not a secondary boycott or a case of an award of back-pay to re-instated employees where money damages may be recovered under federal law. See *Laburnum, supra,* at 665. Under the test enunciated in the *Laburnum* case, therefore, the state courts of Oregon, and the federal district court sitting in a diversity case, clearly have jurisdiction of a common law tort action for damages done by unlawful picketing. Appellants urge upon us the distinction that in the *Laburnum* case the picketing itself was unlawful in the sense that the means used were violent, whereas in the instant case, the means of picketing were peaceful, but the end unlawful. This distinction might have been argued before the *Laburnum* decision. See Cox, *Federalism in Labor Law,* 67 Harv. L. Rev. 1297, 1327 (1954). And an argument much to the same effect was made in the dissenting opinion in the *Laburnum* case. See 347 U.S. 656, at 669-670. But nothing in the opinion of the Court in *Laburnum* suggests an acceptance of that argument, or an intent to restrict its effect to cases of violent picket-

ing, or other tortious means as distinguished from ends. The court said in that case, at p. 669:

> "If Virginia is denied jurisdiction in this case, it will mean that where the federal preventive administrative procedures are impotent or inadequate, the offenders, by coercion of the type found here, may destroy property without liability for the damage done."

A business may be damaged or destroyed by peaceful picketing as well as by violent picketing. We think that *Laburnum* covers wrongful ends as well as wrongful means.

Appellant have cited *International Brotherhood of Teamsters v. N. Y., New Haven & Hartford,* Supreme Court, October Term 1955, No. 33, Jan. 9, 1956. But the Supreme Court there granted certiorari only to determine "whether the state court had jurisdiction to enjoin the petitioner's conduct." and not whether the state could grant tort damages after the harmful conduct had occurred. Nothing in that case modifies the rule of the *Laburnum* case as here applied.

(2) The second category of specifications of error relates to the district court's conclusion that the picketing here involved was for an unlawful purpose and therefore an actionable tort under the law of Oregon. Appellants argue that under the law of Oregon picketing is for an unlawful purpose only when it has for its object the commission by an employer of an illegal act in the sense of a violation of law, not merely an act which is held to be against the public policy of the state.

We have examined the cases cited by both briefs and find nothing in them to negative the district court's conclusion that picketing for the purpose of requiring a shipowner to rehire seamen who had struck in violation of their articles is picketing for an unlawful purpose under the law of Oregon. E.g., see *Schwab v. Moving Picture Machine Operators, Local No. 159*, 165 Ore. 602, 109 P. 2d 600 (1941).

Appellants also argue that the damage awards deprived them of their right to free speech; that the refusal of the shore employees to cross appellants' picket lines is wrongful conduct on the part of the shore employees and therefore not to be attributed to the appellants' actions; and that the appellee could not have been damaged during the period of the picketing because it did not have the custody of the vessel for the idleness of which it claimed damages. We do not feel it necessary, after a reading of the record, to discuss these arguments, except to say that they are unfounded.

(3) The third category of specifications of error relates to the propriety of the class suit and the form of the judgement in each of the three cases. The suits were brought against the officers of the labor associations individually and as representatives of the members of the respective associations. So far as these suits are class suits, they were properly brought under Fed. R. Civ. P. 23 (a) (1). The propriety of class suits to sue members of labor unions where those unions may not be sued as separate entities is too well established to require the citation of authority here. Appellants' argument that the

members of the unions did not have sufficiently identical interests to constitute them classes subject to class suits, by reason of the fact that they were not all engaged in the off-shore grain trade, lacks substance. We find no error in permitting the suits as class suits.

The district court entered final decrees against the individual officers served, the members of the associations they respectively represented, as a class, and also against the labor associations as separate entities, directing further that execution be had against the personal assets of the individuals served in the actions ,and against the assets of the associations, but not against the personal assets of individuals not served. Appellants specify as error the judgments against the associations and the order to enforce these judgments against their assets.

Rule 17(b) of the Fed. R. Civ. P. provides that the capacity of an unincorporated association to sue and be sued should be determined by the law of the state in which the district court is held, unless the cause of action arises under federal laws. The cause of action here arises under the laws of Oregon. It is conceded that Oregon follows the common law rule that unincorporated associations, like partnerships, may not be sued in their own names. *Cousins v. Taylor,* 115 Or. 472, 239 Pac. 96 (1925); Restatement, *Judgments,* sec. 24, Comment (a).

The question presented, therefore, is whether under Oregon law, although unincorporated associations may not be sued in their names, judgment against their members as classes may nevertheless be enforced against the assets of the association. At common law, the nature of

tort liability was that of the members severally. See *Speery Products, Inc. v. Association of American Railroads,* 132 F. 2d 408 (2d Cir. 1942), Opinion of Judge L. Hand, at 410. And it was the undoubted proposition that the several liabilities of the members could not be enforced against the assets of the unincorporated associations that led to the adoption of the rule, for the federal courts, of *United Mine Workers v. Coronado Coal Co.,* 259 U.S. 344 (1922), in which Chief Justice Taft said:

> " . . . we think that such organizations are suable in the federal courts for their acts, and that funds accumulated to be expended in conducting strikes are subject to execution in suits for torts committed by such unions in strikes." Id. at 391.

The *Coronado* rule was an undoubted modification of the common law as it had developed up to that time. Subsequent to the decision of *Coronado,* the S. Ct. of Oregon decided *Cousins v. Taylor,* 115 Or. 472, 239 Pac. 96 (1925), in which it assumed, as a ground supporting its decision holding the officers of an unincorporated association subject to a suit, that the association itself could not be liable. And as recently as 1953, the Supreme Court of Oregon affirmed that it had "not as yet adopted the rule of the Coronado case . . ." See *Lonsford v. Burton,* 200 Or. 497, 267 P 2d 208, at 200 Or. 511-512. The *Lonsford* case itself concerned the sufficiency of identity of interest of plaintiffs with other alleged members of a class, so as to entitle plaintiffs to sue as representatives of a class. The Court's dictum there does not suggest that it has modified the common law rule so as to enable

appellee here to enforce its judgments against the assets of the assocations. Nor do any other cases in the Oregon courts cited to us suggest any such modification. Appellee cites *Brotherhood of Locomotive Firemen, etc. v. Tunstall,* 163 F. 2d 829 (4th Cir. 1947). That cause of action arose under federal law and is not apposite to the question before us. The Restatement of Judgments, sec. 78, says:

> "Comment: (c) . . . In States in which suit can be maintained against an unincorporated association in its business name, judgment can be rendered which is valid against the assets of the association . . ."

At present, Oregon is not a state in which suit can be maintained against an unincorporated association. It may be that the courts of Oregon will adopt the rule of the *Coronado* case in time, or that the legislature of that State will enact legislation to that effect, but it is not for the federal courts to modify the common law of the state of Oregon. So much of the final decrees in the three cases, therefore, as grant judgment against the unincorporated associations as such and permit execution against their assets, are reversed. The remainders of the three decrees are affirmed. The cases are remanded for entry of decrees consistent with this opinion.

(Endorsed:) Opinion. Filed Apr. 6, 1956.

Paul P. O'Brien, Clerk.

APPENDIX B

Opinion of the United States Court of Appeals For the Ninth Circuit Denying Rehearing

This is appellee's petition for rehearing.

Appellant's petition for rehearing was denied on May 7, 1956. No issues are presented in appellee's petition which were not heretofore considered by this Court.

It is only the very able opinion of the trial court, urged upon us by the appellee with respect to his chief contention, that prompts us to make further brief comment. Appellee, conceding that the courts of Oregon have not yet adopted the *Coronado** rule, (allowing suits of unincorporated associations as separate entities and execution of judgments against their assets) now argues that the common law distinction between class suits against the members of an association and suits against the associations themselves is a matter of "semantics, not substance." The judgment and order entered below restricted the execution of the judgments to the assets of members of the class served in the action, thus preserving the rights of other members of the class to make their usual defenses, if any, before judgment may be had against them personally and execution may be had against their personal assets. If the assets of the union are indeed the property of the members, to allow execution against those assets would be to allow execution against the assets of persons not served in the action. Plainly, it is

*United Mine Workers v. Coronado Coal Co., 259 U.S. 344 (1922).

because there is this real difference between the remedies of suit against the members as a class and suit against the association itself that the *Coronado* rule was adopted in the federal courts, and that appellee now seeks to have this Court subsume under the heading of "sematics" the difference between that rule and the one obtaining in the State of Oregon.

The petition for rehearing is denied.

(Endorsed:) Order on Appellee's Petition for Rehearing. Filed May 21, 1956.

Paul P. O'Brien, Clerk.

APPENDIX C

Opinion of District Court on Consolidated Cases For Damages

August 9, 1954

SOLOMON, Judge.

By stipulation, these three cases were consolidated for trial on plaintiff's claims for damages allegedly arising from the picketing of its vessel, the SS RIVIERA, by defendants.

The background of the controversy, as well as the particular facts out of which these arose, has been described in detail in the opinions which I rendered in connection with plaintiff's applications for interlocutory injunctions,[1] in the Court of Appeals' opinion dismissing the appeal from the orders granting the injunctions,[2] and in prior cases growing out of the same controversy.[3]

By reason of such opinions and the participation of counsel for both plaintiff and defendants in all of such

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[1]Civil No. 6699. Opinion dated November 22, 1952.
Civil No. 6735. Opinion dated December 6, 1952.
Civil No. 6745. Opinion dated December 12, 1952.

[2]205 F. 2d 944.

[3]Compania Naviera Hidalgo, libelant, v SS RIVIERA, her engines, etc., N. Pedersen, et al. Civil No. 6629. Opinion dated September 25, 1952.

H. Berg et al, libelants and cross-respondents v. SS RIVIERA, her engines, tackle and gear, respondent. Civil No. 6652 (Tr. 456).

Compania Naviera Hidalgo, S.A., claimant and cross-libelant, Compania Naviera Hidalgo, S.A., Owner of the SS Riviera, her engines, etc., libelant, v. Sailors Union of the Pacific et al, respondents, Civil No. 6661. Opinion dated October 22, 1952 (Tr. 456).

cases, no useful purpose will be served to repeat the facts here.

On the issue of damages now before the court, in addition to the agreed facts contained in the pretrial orders, the transcript of the testimony and the exhibits introduced in evidence in all of the prior proceedings and cases were received in evidence. The only other evidence admitted at the trial related to the damages which plaintiff alleges it suffered as the result of the picketing and such evidence consisted of a few exhibits and the testimony of only one witness, Captain Pangas.

I find that all of the agreed facts set forth in each of the pretrial orders are true.

On the issue of jurisdiction, I find that:

1. The members of each union named as a defendant in each of these three cases have sufficiently identical interests in the subject matter to constitute a class subject to suit by service upon representatives.

2. The individuals named as defendants in each case, by virtue of their positions as members and officers of such union and their interest as defendants in such case, are appropriate and capable persons to represent the interests of all the members of the union.

3. Each of such cases brought by plaintiff is a class action and is appropriate and proper to enable plaintiff to recover damages suffered as the result of picketing by members of the union.

On the issues raised in connection with the merits of each case, I find that Findings of Fact I to IX, in-

clusive, heretofore rendered in these cases in connection with the granting of the interlocutory injunctions, are true and correct and I hereby adopt and incorporate in this opinion such findings of fact, except as to the amount of damages suffered by plaintiff.

I further find that the damages sustained by plaintiff in each case were the proximate result of the picketing of the SS RIVIERA by the defendants named in such case. Specifically, I find that the picketing was undertaken for the purpose of preventing plaintiff from repairing and loading the SS RIVIERA and that such picketing effectively prevented the repairing and loading of such vessel; that the failure of employees of independent contractors to cross the picket line did not constitute an independent intervening cause of plaintiff's damage; that the damages sustained by such picketing were not so indefinite and uncertain as to prevent damages from being assessed; and the fact that the vessel was in the technical custody of the United States Marshal during all or a portion of this period did not deprive plaintiff of the opportunity to repair and load the vessel, but such inability was solely caused by the picketing of the vessel by members of the defendant unions.

I find that in case No. 6699 plaintiff was damaged in the amount of $38,700, as a result of the acts of the defendants in such cases, and that plaintiff is entitled to a judgment in that amount.

I find that in case No. 6735 plaintiff was damaged in the amount of $9,000 as the result of the acts of defendants in such case, and that plaintiff is entitled to a judgment in that amount.

I find that in case No. 6745 plaintiff was damaged in the amount of $2,700 as the result of the acts of the defendants in such case, and that plaintiff is entitled to a judgment in that amount.

I further find that the judgment to be entered in each of these cases shall be in favor of plaintiff and against the individually named defendants, each member of the defendant union, and the defendant union itself, but that execution thereon shall be limited to the property of the individually named defendants who were actually served with summons and complaint and against the property of the union, but not against the property of the individual members who were not so served.

COMMENT

Defendants' brief raises four principal contentions:

First, that this court is deprived of jurisdiction because the Taft Hartley Act has pre-empted the field. The same contention was urged at the time I had under consideration the issuance of the interlocutory injunctions. In my opinion dated November 22, 1952, in Civil No. 6699, I stated:

> "It seems clear to me that the Taft-Hartley Act is concerned solely with the labor relations of American workers—between American concerns and their employees in the United States, and it is not intended to, nor does it cover a dispute between a foreign ship and its foreign crew. The National Labor Relations Board has construed the act in the same way. In a petition brought by the Sailors' Union of the Pacific to represent foreign seamen on a ship registered under a foreign flag the National Labor Relations Board dismissed the petition on

the ground that the internal economy of a vessel of a foreign registry and ownership was involved. (Companie Maritima Samsok, Ltd., Sailors Union of the Pacific A.F.L.) case Number 20-RS-809 May 1, 1950."

I have carefully examined the argument of defendants on this issue and particularly the statutory provisions and the decisional law. However, nothing herein contained has altered by opinion that these cases are not governed by the provisions of the Labor Management Relations Act (Taft Hartley Act).

Second, that the picketing by the defendant unions was not wrongful. In the opinion to which I have already referred, I have set forth my views and have stated that the object of the picketing in each case was illegal. I do not agree with defendants' contention that picketing is unlawful only in those instances in which a union seeks to require an employer to commit an illegal act. In my view, picketing for an illegal purpose forms a proper basis for the allowance of damages.

Third, that no damages were proximately caused by the picketing but the losses plaintiff suffered were solely due to the refusal of the longshoremen and repairmen to cross the picket line and such wrongful acts constituted independent intervening causes of such losses.

I cannot agree with this contention.

The conduct of the longshoremen and the repairmen who refused to cross the picket line was foreseeable; in fact, it was the result which the defendants intended to accomplish by the picketing. I do not believe that Judge

Fee's opinion in *Montgomery Ward & Co. v. Northern Pacific Co. et al* is applicable to a situation of this kind. The most defendants can get from that decision is that the longshoremen and the repairmen might be equally liable with the defendants.

Fourth, defendants' last contention is that any judgment that is rendered in this case should not run against the property of the union itself because a judgment may not be entered against the union as an entity in Oregon.

It is true that, in Oregon, unincorporated labor organizations may not be sued as entities. As recently as October 21, 1953, in the case of *Lonsford et al v. Burton et al* (58 Oregon Advance Sheets No. 6, page 295) Judge Brand stated that the Supreme Court of Oregon "has not yet adopted the rule of the Coronado case" (*United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344). In spite of such statement, the court treated the answers of certain members of an International Union as an answer made on behalf of the International.

However, the fact that an unincorporated union may not be sued as an entity does not mean that a union may not be bound by a judgment rendered in a class action in which some individual members of the union are named and served.

One of the questions considered in *Tunstall v. Brotherhood of Locomotive Firemen & Engineers*, 148 F. 2d 403, was:

> "May a class suit be brought against an unincorporated association in such a way as to bind the association?"

Chief Judge Parker, speaking for the court in that case, answered this question in the affirmative. He discussed Rule 23 of the Federal Rules of Civil Procedure which relates to class actions and found that:

> "The right to bring a class suit to enforce the liability of an unincorported association existed long prior to the adoption of the Federal Rules of Civil Procedure." (page 404)

He also stated:

> "Even in a state like West Virginia which adheres to the common law rule that an unincorporated labor association may not be sued as an entity, see Milam v. Settle, W. Va., 32 S.E. 2d 269, such an association may be sued in the state courts by naming as parties and serving individually some of the members composing the association. See West v. Baltimore & Ohio R. Co., 103 W. Va. 417, 137 S.E. 654; Simpson v. Grand International Brotherhood of Locomotive Engineers, 83 W. Va. 355, 98 SE 580."

Defendants do not challenge this holding. In fact they concede:

> "That members of unincorporated labor organizations may be sued for torts through the medium of the class suit."

Having made this concession, I do not understand the logic of their contention that the assets of an unincorporated union, to which all of the members have the right of joint use and enjoyment, may not be reached in a class action brought against all of the members of the union for the acts of the union itself.

In other words, defendants contend that, even though the personal assets of individual members of the union

who were served may be levied upon in this action and even though a judgment rendered against a class may be used as the basis for obtaining judgments against other members of the union who were not served in order that their personal assets may be levied upon, the assets of the union itself which caused the breach which resulted in the judgment may not be reached.

In my view the mere statement of defendants' contention reveals its unsoundness. Even without considering the gross inequity of such result, this contention disregards the nature of a class action. A class action is merely a procedural device that has been traditionally used in some jurisdictions which follow the common law rule that such associations may not be sued as entities. Whichever procedure is followed, the final result is the same.

Counsel for plaintiff in each case shall prepare appropriate findings of fact, conclusions of law, and judgments, all in conformity with this opinion.

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

WILLIAM BENZ, et al.,

Appellants,

vs.

COMPANIA NAVIERA HIDALGO, S.A.,

Appellee.

JUDGMENT

(Omitting formal parts)

" . . . it is now here ordered and adjudged by this Court, that that portion of the decree of the said District Court in this cause which grants judgment against the unincorporated association, as such, and permit execution against its assets be, and hereby is reversed, and that the remaining portions of the decree be, and hereby are affirmed, and that said cause be, and hereby is remanded to the said District Court for entry of a decree consistent with the opinion of this Court, with costs in this Court in favor of the unincorporated association and against the appellee.

"IT IS FURTHER ORDERED and adjudged by this Court, that the unincorporated association recover against the appellee for its costs herein expended and have execution therefor."

Note: Identical judgments were also entered in each of the other two companion cases.

APPENDIX E

COMPANIA NAVIERA HIDALGO, S.A.,
Plaintiff,

vs.

WILLIAM BENZ, et al,
Defendants.

FINAL DECREE

(Omitting Formal Parts

"It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $38,700.00, together with its costs and disbursements of and from William Benz and Robert Williams, each member of the Sailors' Union of teh Pacific, and Sailors' Union of the Pacific, an unincorporated association of seafaring men with its present headquarters in San Francisco, California, and each and all of them; and

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of William Benz and Robert Williams and against any property held by the Sailors' Union of the Pacific, or for the use and benefit of the members of the Sailors' Union of the Pacific, whether held in the name of the association or by others for the association; but execution shall not issue hereon against the individual property of any member of the Sailors' Union of the Pacific, other than those heretofore individually named and made parties herein."

APPENDIX F

COMPANIA NAVIERA HIDALGO, S.A.,

Plaintiff,

vs.

M. D. MacRAE, et al,

Defendants.

FINAL DECREE

(Omitting Formal Parts

"It is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $9,000.00, together with its costs and disbursements of and from M. D. MacRae, William Caldwell and Viggo Hansen, each member of Local 90, National Organization of Masters, Mates and Pilots, AFL, and Local 90, National Organization of Masters, Mates and Pilots, AFL, an unincorporated association of seafaring men with its present headquarters in San Francisco, California, and each and all of them; and

It Is Hereby Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of M. D. MacRae, William Caldwell and Viggo Hansen and against any property held by Local 90, National Organization of Masters, Mates and Pilots, AFL, or for the use and benefit of the members of Local 90, National Organization of Masters, Mates and Pilots, AFL, whether held in the name of the association or by others for the association; but execution shall not issue hereon against the individual property of any member of Local 90, National Organization of Masters, Mates and Pilots, AFL, other than those heretofore individually named and made parties herein."

APPENDIX G

COMPANIA NAVIERA HIDALGO, S.A.,
Plaintiff,

vs.

JEFF MORRISON, et al,
Defendants.

FINAL DECREE

(Omitting Formal Parts)

"It Is Hereby Ordered, Adjudged and Decreed that plaintiff recover the sum of $2,700.00, together with its costs and disbursements of and from Jeff Morrison, John Johnson, each member of the Atlantic Gulf District, Seafarers International Union, AFL, and the Atlantic and Gulf District, Seafarers International Union, AFL, an unincorporated association of seafaring men with its West Coast headquarters in San Francisco, California, and each and all of them; and

It Is Hereby Further Ordered, Adjudged and Decreed that plaintiff may have execution issue hereon against the individual property of Jeff Morrison and John Johnson and against any property held by the Atlantic and Gulf District, Seafarers International Union, AFL, or for the use and benefit of the members of Atlantic and Gulf District, Seafarers International Union, AFL, whether held in the name of the association or by others for the association; but execution shall not issue hereon against the individual property of any member of the Atlantic and Gulf District, Seafarers International Union, AFL, other than those heretofore individually named and made parties herein."